

MEMORANDUM

TO: The Reproductive Health Access Project
FROM: Law Students for Reproductive Justice, Georgetown Chapter*
RE: Provider Licensing Requirements – **New Mexico (Revised)**
DATE: January 18th, 2016

*not formally affiliated with the Georgetown University Law Center.

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I. Requirements for a Professional License

A. Standard Application Process - Physician

The New Mexico medical board will consider for licensure a person who:

- (1) Is of good moral character;
- (2) Is a graduate of an accredited United States or Canadian medical school;
- (3) Has passed an examination approved by the Board; and,
- (4) Has completed two years of an approved post-graduate training program.

N.M. STAT. ANN. § 61-6-11(A) (Westlaw through 2015).

The Board may consider whether other professional experience is substantially equivalent if the applicant has not completed an approved post-graduate training program. N.M. STAT. ANN. § 61-6-11(B) (Westlaw through 2015).

Applicants may be required to appear before the Board for an interview, and the Board may require fingerprints and other information required for a criminal background check. N.M. STAT. ANN. § 61-6-11(D), (G). Applicants must also provide a completed application with passport photo, verification of licenses held in any other states, two recommendations from physicians, verification of all work experience and hospital affiliations in the past five years, a copy of all specialty board certifications, if any, and proof of compliance with United States immigration laws if they are not U.S. citizens. N.M. CODE R. § 16.10.2.9(B) (Westlaw through 2016).¹ Applicants using HSC² must also provide a certified transcript of exam scores, and may be required to produce proof of identity, a status report of educational commission for foreign medical graduates (ECFMG) and documentation of postgraduate training. N.M. CODE R. § 16.10.2.9(D) (Westlaw through 2016). Those who do not use a credential validation service must provide verification of medical education, transcripts, postgraduate training form, and outside state license documents in addition to the above requirements. N.M. CODE R. § 16.10.2.9(E) (Westlaw through 2016). The license renewal date is July 1. N.M. CODE R. § 16.10.2.9(G) (Westlaw through 2016).

¹ The requirements for graduates of foreign medical schools differ slightly.

² A New Mexico credential validation corporation. See N.M. CODE R. § 16.10.2.7(D) (Westlaw through 2016).

The application fee for an unrestricted medical license is \$400, and there is a \$450 triennial license renewal fee plus a triennial impaired physicians program of \$150. N.M. CODE R. § 16.10.9.8 (Westlaw through 2016).

B. Standard Application Process - Physician Assistant

According to the Physician Assistant Act, prior to practicing, a person must first obtain a license from the board. N.M. STAT. ANN. § 61-6-7(C) (Westlaw through 2015). The Board may license a qualified person who:

- (1) Has graduated from a physician assistant or surgeon assistant program accredited by the national accrediting body, and has passed a physician assistant national certifying exam, or
- (2) Passed the physician assistant national certifying examination administered by the National Commission on Certification of Physician Assistants (NCCPA) prior to 1986.

N.M. STAT. ANN. § 61-6-7 (B) (Westlaw through 2015). The person must also

- (3) have current NCCPA certification;
- (4) have good moral and professional character; and
- (5) supply any other proof of competency the Board may request.

N.M. CODE R. § 16.10.15.8 (Westlaw through 2016).

Option (2) above also requires proof of continuous practice as a physician assistant in another state for four years prior to application. N.M. CODE R. § 16.10.15.8(A) (Westlaw through 2016). The national accrediting body referred to in the above is specified as the American Medical Association's (AMA) Committee on Allied Health Education and Accreditation (CAHEA) or the Accreditation Review Committee on Education for the Physician Assistant (ARC-PA). N.M. CODE R. § 16.10.15.8(A) (Westlaw through 2016). The applicant must work under the supervision of a board-registered licensed physician, ensure the supervising physician is so registered, and register his supervising physician with the Board when applying. N.M. STAT. ANN. § 61-6-7 (B), (H) (Westlaw through 2015). The supervising physician must also submit written notice of intent to supervise the physician assistant on prescribed forms. N.M. CODE R. § 16.10.15.11(B) (Westlaw through 2016). One year interim permits may be issued to applicants who have completed the application process and all requirements except NCCPA certification. N.M. CODE R. § 16.10.15.10(A) (Westlaw through 2016). One year training permits may be issued to applicants who have completed the application process and have all qualifications but have not been actively or continuously in clinical practice for the two years prior to application. N.M. CODE R. § 16.10.15.10(B) (Westlaw through 2016).

An applicant must complete an application supplied by the board and pay a licensing fee. N.M. STAT. ANN. § 61-6-7(F) (Westlaw through 2015). The application requires:

- (1) Two letters of recommendation from physician assistant program directors or licensed physicians in the United States who have personal knowledge of the person's character and competence;
- (2) Verification of licensure sent directly to the Board from any state where the person holds or has held a license to practice any health care profession; and
- (3) Verification of all work experience for the previous two years;

N.M. CODE R. § 16.10.15.9 (Westlaw through 2016).

All applicants will also be scheduled for a personal interview before the Board or the Board's designee. N.M. CODE R. § 16.10.15(E) (Westlaw through 2016).

The licensure fee shall not exceed \$150 for initial licensure and \$150 biennially. N.M. STAT. ANN. § 61-6-19(A) (Westlaw through 2015). All applicants must also pay for a state and national criminal history screening. N.M. CODE R. § 16.10.15(H) (Westlaw through 2016).

C. Temporary Licenses

Temporary licenses to practice in New Mexico under the supervision of a New Mexico-licensed physician are available to applicants who are licensed in another state or country and who are otherwise qualified to practice in New Mexico. N.M. STAT. ANN. § 61-6-14(B) (Westlaw through 2015). The temporary license may be granted for: educational or research purposes, provision of specialized diagnostic or treatment procedures, or implementation of new technology. N.M. STAT. ANN. § 61-6-14(B)(1) (Westlaw through 2015). The out-of-state physician's application must provide information on the specific program of work planned and the address of the sponsoring institution or organization where the work will be performed, as well as verification of licensure in another state or jurisdiction. N.M. CODE R. § 16.10.2.14(B) (Westlaw through 2016). The temporary license must also identify a supervising physician, actively licensed in New Mexico, who must submit an affidavit attesting to the applicant's qualifications and planned activities. N.M. STAT. ANN. § 61-6-14(B)(1) (Westlaw through 2015). The applicant may only engage in the activities specified on the temporary license. *Id.*

The temporary license may be issued for a period not to exceed three months. N.M. STAT. ANN. § 61-6-14(B)(2) (Westlaw through 2015). It may be renewed up to three times upon written justification for the plan remaining in effect. N.M. CODE R. § 16.10.2.14(E) (Westlaw through 2016). After the third renewal, the physician may reapply for a temporary license. *Id.*

The fee for a temporary teaching/research license, as this form of license is called, is \$100. N.M. CODE R. § 16.10.9.8(E) (Westlaw through 2016). While there appears to be a renewal fee, it is not specified. *See* N.M. CODE R. §§ 16.10.2.14(E), 16.10.9.8 (Westlaw through 2016).

D. *Licensure by Endorsement*

The Board may grant a license without examination to an applicant who is of good moral character, properly endorsed by the examining board with jurisdiction (that is, certified to have passed an approved examination and to be in good standing in that jurisdiction) and who:

- (1) has graduated from a medical school in good standing;
- (2) is board certified in a recognized specialty;
- (3) has an unrestricted license in the US or Canada;
- (4) has practiced medicine in the US or Canada for at least three years immediately preceding the application; and
- (5) was not the subject of a disciplinary action in a state or province.

N.M. STAT. ANN. § 61-6-13(A) (Westlaw through 2015); N.M. CODE R. § 16.10.2.10(A) (Westlaw through 2016). Applicants must provide completed application with passport photo, verification of licenses held in any other states, two recommendations from physicians, verification of all work experience and hospital affiliations in the past five years, a copy of all specialty board certifications, if any, and proof of compliance with United States immigration laws if they are not U.S. citizens or were educated at medical schools outside the US and Canada. N.M. CODE R. § 16.10.2.10(B) (Westlaw through 2016). Applicants may be required to appear before the Board for an interview or submit fingerprints and other information necessary for a criminal background check. N.M. STAT. ANN. § 61-6-13(D), (F) (Westlaw through 2015). The fee for licensure by endorsement is most likely the same as that for licensure by examination, but in any case the fee may not exceed \$400. N.M. STAT. ANN. § 61-6-19(A)(1) (Westlaw through 2015).

E. *Telemedicine Licensure Requirements*

Telemedicine means the practice of medicine across state lines by the rendering of a medical opinion or treatment to a patient in New Mexico by a physician outside of New Mexico as a result of electronic or other transmission of patient data. N.M. STAT. ANN. § 61-6-6(K) (Westlaw through 2015); N.M. CODE R. § 16.10.2.7(K) (Westlaw through 2016). A telemedicine license is a limited license that allows physicians located outside of New Mexico to practice medicine on patients in New Mexico. N.M. CODE R. § 16.10.2.8(B) (Westlaw through 2016). Since out-of-state physicians who only irregularly or infrequently consult with New Mexico physicians and those who casually practice across state lines are exempt from licensure requirements (*see* N.M. STAT. ANN. § 61-6-17 (Westlaw through 2015) and discussion, *infra*), only those who intend to practice across state lines frequently or under contract need obtain a telemedicine license.

Physicians seeking a telemedicine license must submit an application, passport photos, verification of licensure in outside state(s), information regarding any previous disciplinary actions, and a fee of \$400. N.M. CODE R. §§ 16.10.2.11(B), 16.10.9.8(L) (Westlaw through 2016). An initial license expires after no less than one and no more than thirteen months. N.M. CODE R. § 16.10.2.11(D) (Westlaw through 2016).

F. Public Service License

A public service license is a limited license for physicians in training who have successfully completed one year of postgraduate training. N.M. CODE R. § 16.10.2.8(D) (Westlaw through 2016). A physician with one year of postdoctoral training may apply for a public service license when under the direct supervision of a licensed physician or, if employed in a medically underserved area, with immediate access to a licensed physician by electronic means. N.M. STAT. ANN. § 61-6-18.1(B) (Westlaw through 2015); N.M. CODE R. § 16.10.2.13(A)(3) (Westlaw through 2016). An applicant for a public service license must meet all requirements for licensure and must be enrolled in a board-approved residency program in New Mexico or elsewhere. The applicant must also obtain written approval from the training program director to pursue a public service training program opportunity outside of the residency. N.M. STAT. ANN. § 61-6-18.1(A) (Westlaw through 2015). Such a license is valid for up to twelve months and may be renewed by the board. N.M. STAT. ANN. § 61-6-18.1(C) (Westlaw through 2015). The fee is \$50 per year. N.M. CODE R. § 16.10.9.8(K) (Westlaw through 2016).

An applicant for a public service license must have graduated from an approved medical school, passed all required examinations, and obtained a postgraduate training license from the New Mexico Board. N.M. CODE R. § 16.10.2.13 (Westlaw through 2016).

This provision would make it possible to train those enrolled in out-of-state residency programs in abortion procedures in New Mexico. However, this would require the agreement of the head of the residency program in which the out-of-state trainee is enrolled.

G. Exemptions from Licensure Requirements

The Medical Practice Act does not apply to services rendered free of charge in an emergency, the practice of midwifery, commissioned medical officers in the discharge of their official duties, physicians licensed elsewhere performing emergency procedures during interstate travel, physicians licensed elsewhere who irregularly or infrequently consult with a New Mexico-licensed physician (not to exceed 10 patients per year), or physicians engaged in the informal practice of medicine across state lines, without any contractual arrangement and without compensation or the expectation thereof. N.M. STAT. ANN. § 61-6-17 (Westlaw through 2015); N.M. CODE R. § 16.10.2.11(E) (Westlaw through 2016).

In addition, a properly trained medical or surgical assistant may perform reasonably-delegated tasks, without a license, for their directly-supervising physician. Such tasks must be ones that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate. These tasks must also be possible for a non-physician to perform safely in the customary manner. N.M. STAT. ANN. § 61-6-17(I) (Westlaw through 2015). The delegating physician remains responsible for the medical acts performed on his or her behalf. *Id.*

A physician assistant student enrolled in a CAHEA-accredited physician assistant or surgeon assistant educational program is exempt from licensure, as is a physician assistant employed by the federal government while performing duties incident to that employment. N.M.

STAT. ANN. § 61-6-7.3 (Westlaw through 2015); N.M. CODE R. § 16.10.15.15 (Westlaw through 2016).

None of these exemptions seem particularly well-suited to allowing out-of-state physicians to be trained in abortion procedures in New Mexico. Fortunately, other provisions of New Mexico law, such as the temporary license discussed above, will likely allow such training to occur.

II. Physician Training

A. Medical Students

Medical students who are properly enrolled in a medical school in good standing may practice medicine in New Mexico without compensation, so long as services are rendered under the supervision of the school faculty as a part of his course of study. N.M. STAT. ANN. § 61-6-18(A) (Westlaw through 2015). Neither the statute nor the accompanying regulations indicate whether this provision applies to students enrolled in medical schools outside of New Mexico. However, the statute's silence on the location of the medical schools makes it possible that this provision could be applied to students in guest rotations in New Mexico medical schools.

B. Postgraduate Programs

A postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state. N.M. Code R. § 16.10.2.12 (Westlaw through 2016). Each applicant must have graduated from a board approved school, passed part I of the USMLE, and be of good moral character. N.M. CODE R. § 16.10.2.12(A) (Westlaw through 2016). Interns and residents may practice medicine in New Mexico after obtaining a postgraduate training license. N.M. STAT. ANN. § 61-6-18(B)-(D) (Westlaw through 2015).

Individuals enrolled in board approved training programs outside of New Mexico may apply for a postgraduate training license as a prerequisite to obtaining a New Mexico public service license. N.M. CODE R. § 16.10.2.12 (Westlaw through 2016).

Postgraduate training licenses are valid for up to one year and may be renewed for up to eight years or the completion of residency, whichever is shorter, as long as the holder remains enrolled in a board approved training program. N.M. CODE R. § 16.10.2.12(D) (Westlaw through 2016). The fee for a postgraduate training license is \$10. N.M. CODE R. § 16.10.9(J) (Westlaw through 2016).

C. Registered Nurse Training

Graduate nurses (GNs) may apply for a permit-to-practice that enables them to practice nursing at a specific institution in New Mexico under the direct supervision of a registered nurse (RN) prior to receiving the results of the NCLEX. N.M. CODE R. § 16.12.2.7(P)(2) (Westlaw through 2016). To be eligible, an applicant must complete the application process to take the

NCLEX within twelve weeks of graduation and assure that the prospective employer will submit a letter of intent to employ that includes the name and nursing license number of the direct supervisor. N.M. CODE R. § 16.12.2.10(H)(1)(a), (c) (Westlaw through 2016). Applicants must also submit fingerprints cards and documents, and fee to complete a state and federal background check. N.M. CODE R. § 16.12.2.10(H)(1)(d) (Westlaw through 2016).

Permits-to-practice for graduates of U.S. schools may be issued for a period up to six months, may not be issued for employment at institutions in Nurse Licensure Compact states, and will not be issued for applicants who declare residency in other compact states. N.M. CODE R. § 16.12.2.10(H)(1)(a) (Westlaw through 2016). Graduates from non-U.S. nursing programs may also receive a permit-to-practice for up to six months if they meet the other licensure requirements associated with non-U.S. nursing programs. N.M. CODE R. § 16.12.2.10(H)(1)(b) (Westlaw through 2016). Permits-to-practice are valid until exam results are disseminated, although not longer than six months, and shall not be valid if the applicant fails the exam. N.M. CODE R. § 16.12.2.10(H)(4)(a) (Westlaw through 2016).

D. Nurse Practitioner Training

Graduate nurse practitioners (GNPs) may apply for a permit-to-practice that allows them to practice at a specific place of employment under the direct supervision of a physician or certified nurse practitioner (CNP). N.M. CODE R. § 16.12.2.7(P)(3) (Westlaw through 2016). GNPs with a permit-to-practice may not prescribe medications except under the direct supervision of a licensed CNP, certified nurse specialist, or physician. N.M. CODE R. § 16.12.2.13(C)(2) (Westlaw through 2016). GNPs are eligible for permits-to-practice upon written request as long as all licensure requirements have been met except for national nursing certification. N.M. CODE R. § 16.12.2.13(C) (Westlaw through 2016). GNP permits will be issued to the employer, who must submit a letter of verification of intent to employ that includes the name of the practice supervisor and prescription supervisor. N.M. CODE R. § 16.12.2.13(C)(3)-(4) (Westlaw through 2016).

Permits-to-practice shall be valid for up to six months, but shall not be valid if the GNP fails the national certifying exam. N.M. CODE R. § 16.12.2.13(C)(7) (Westlaw through 2016).

E. Physician Assistant Training

Physician assistants (PAs) may be issued interim permits that enable them to practice after they have completed the application process and all licensure requirements but have not yet been certified by the National Commission on Certification of Physician Assistants (NCCPA). N.M. CODE R. § 16.10.15.10(A) (Westlaw through 2016). PAs have one year from graduation from a program approved by the accreditation review committee on education for the physician assistant (ARC-PA) to become certified and may practice under an interim permit for the duration of that year. N.M. CODE R. § 16.10.15.10(A)(1)-(2) (Westlaw through 2016).

Training permits may also be issued to applicants who have completed the application process and who have not been active in clinical practice for two years prior to the application and who are required to undertake retraining prior to licensure or reinstatement. N.M. CODE R. §

16.10.15.10(B) (Westlaw through 2016). Training permits are valid for one year and may not be renewed. Id.

III. Restrictions on the Provision of Abortion Services + Denial and Revocation of Licenses

A. Advanced Practice Nursing and Abortion

Importantly, only a physician licensed by the state may provide abortion care. N.M. STAT. ANN. § 30-5-1(C) (Westlaw through 2015). The New Mexico attorney general issued an opinion stating that this physician-only requirement confirming that this provision is enforceable, and this opinion has not been superseded by any other interpretation. N.M. Op. Att'y Gen. No. 90-19 (Oct. 3, 1990).

Although the state offers various forms of licensure for certified nurse practitioners, including temporary licensure and expedited recognition of licenses granted in other states, abortion care is not legally within these clinicians' scope of practice. N.M. STAT. ANN. §§ 61-3-5.1, 61-3-23.2 (Westlaw through 2015).

B. Revocation of License under New Mexico State Law

The board may refuse to license and may revoke or suspend a license that has been issued by the board or a previous board and may fine, censure or reprimand a licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. N.M. STAT. ANN. § 61-6-15(A) (Westlaw through 2015). "Unprofessional or dishonorable conduct" includes "procuring, aiding or abetting a criminal abortion." N.M. STAT. ANN. § 61-6-15(D)(1) (Westlaw through 2015). Criminal abortion consists of administering to any pregnant woman any medicine, drug or other substance, or using any method or means whereby an untimely termination of her pregnancy is produced, or attempted to be produced, with the intent to destroy the fetus, and the termination is not a justified medical termination. N.M. STAT. ANN. § 30-5-3 (Westlaw through 2015). "Justified medical termination" means the intentional ending of the pregnancy of a woman . . . upon written certification by the members of a special hospital board that:

- (1) the continuation of the pregnancy, in their opinion, is likely to result in the death of the woman or the grave impairment of the physical or mental health of the woman; or
- (2) the child probably will have a grave physical or mental defect; or
- (3) the pregnancy resulted from rape, as defined in Sections 40A-9-2 through 40A-9-4 NMSA 1953. Under this paragraph, to justify a medical termination of the pregnancy, the woman must present to the special hospital board an affidavit that she has been raped and that the rape has been or will be reported to an appropriate law enforcement official; or
- (4) the pregnancy resulted from incest.

N.M. STAT. ANN. § 30-5-1(C) (Westlaw through 2015). The abortion must be requested by the woman or, if she is under eighteen, by her parent or guardian. *Id.* The abortion must be performed by a physician licensed in the state of New Mexico, and must take place in a hospital accredited by the Health Services Division of the Department of Health and Environment. *Id.* “Special hospital board” means a committee of two licensed physicians or their appointed alternates who are members of the medical staff at the accredited hospital where the proposed justified medical termination would be performed, and who meet for the purpose of determining the question of medical justification in an individual case, and maintain a written record of the proceedings and deliberations of such board. N.M. STAT. ANN. § 30-5-1(D) (Westlaw through 2015).

C. Unconstitutionality After Roe v. Wade

Although some of these provisions are not currently in effect because of the decision in Roe v. Wade, they should be noted. The unconstitutionality of certain provisions was decided by the court in State v. Strance, 84 N.M. 670 (Ct.App.1973). The court held that the statute banning “criminal abortions” is enforceable to the extent that it is “a criminal statute penalizing the act of performing abortions on the unconsenting, or performing an abortion on a woman under the age of eighteen years without the consent of both the woman and her then living parent or guardian, or the performance of an abortion by a person who is not a physician licensed by the State of New Mexico.” *Id.* at 673. “Justified medical termination” has also been narrowed in definition, making N.M. STAT. ANN. § 30-5-1 “currently enforceable only against the act of performing an abortion on an unconsenting woman, or the performance of an abortion by a person who is not a physician licensed by the State of New Mexico.” N.M. Att’y Gen. Op. No. 90-19 (Oct. 3, 1990). The requirement that an abortion be performed by a New Mexico-licensed physician is still enforceable despite Roe v. Wade. Fortunately, both temporary licenses and postgraduate training licenses should satisfy the licensure requirement.

D. Probation

The board may, in its discretion and for good cause shown, place the licensee on probation on the terms and conditions it deems proper for protection of the public, for the purpose of rehabilitation of the probationer or both. N.M. STAT. ANN. § 61-6-15(B) (Westlaw through 2015). Upon expiration of the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that the licensee is competent to practice, is of good moral character and has complied with the terms of probation. *Id.*